

[Docket No. 14]

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

KYLE CANNON, LEWIS LYONS, and  
DIANNE LYONS, individually and  
on behalf of all others  
similarly situated,

Plaintiffs,

v.

ASHBURN CORPORATION, et al.,

Defendants.

Civil No. 16-1452 (RMB/AMD)

**ORDER**

THIS MATTER having come before the Court upon the Motion to Dismiss or, in the alternative, to Strike by Defendants Ashburn Corporation d/b/a Wines 'Til Sold Out and WTSO.com (together, the "Defendants") [Docket No. 14]; and the Court having reviewed the parties' submissions; and for the reasons set forth in the accompanying Opinion issued on this date;

IT IS HEREBY on this 7th day of December 2016,

**ORDERED** that the Defendants' Motion to Dismiss or, in the alternative, to Strike [Docket No. 14] is **GRANTED, in part, and DENIED, in part**; and it is further

**ORDERED** that Defendants' Motion to Dismiss Plaintiffs' New Jersey Consumer Fraud Act claim (Count I) is **GRANTED without prejudice, in part, and DENIED, in part**; and it is further

**ORDERED** that Defendants' Motion to Dismiss Plaintiffs' unjust enrichment claim (Count II) is **GRANTED with prejudice**; and it is further

**ORDERED** that Defendants' Motion to Dismiss Plaintiffs' fraud claim (Count III) is **GRANTED without prejudice, in part, and DENIED, in part**; and it is further

**ORDERED** that Defendants' Motion to Dismiss Plaintiffs' breach of contract claim (Count IV) is **GRANTED without prejudice, in part, and DENIED, in part**; and it is further

**ORDERED** that Defendants' Motion to Dismiss Plaintiffs' New Jersey Truth-in-Consumer Contract, Warranty and Notice Act claim (Count V) is **GRANTED without prejudice**; and it is further

**ORDERED** that Defendants' alternative Motion to Strike the class allegations in the Complaint is **DENIED without prejudice**; and it is further

**ORDERED** that Plaintiffs shall have thirty (30) days from the entry of this Order to amend their pleadings, if they choose to do so.

s/Renée Marie Bumb  
RENÉE MARIE BUMB  
UNITED STATES DISTRICT JUDGE